

## CHAPTER 13 COMMUNITY REMEDIATION

### **591—13.1(455G) Definitions.** As used herein:

“*Administrator*” means the person or organization responsible for the day-to-day administrative activities of the program.

“*Board*” means the Iowa comprehensive petroleum underground storage tank fund board or its representatives.

“*Community remediation*” means a program of coordinated testing, planning or remediation involving two or more tank sites potentially connected with a continuous contaminated area.

“*DNR*” means the Iowa department of natural resources.

“*Packaged community remediation*” means the grouping together of more than one community remediation project in the overall request for proposal process developed by the board. The purpose of the packaged community remediation program is to provide for the efficient handling of multiple community remediation projects and to develop accurate environmental data to ensure correct site classification, appropriate corrective action design, monitoring and cleanup to DNR’s standards. Each site in a packaged community remediation project shall meet the DNR’s requirements relative to site cleanup reports and corrective action.

“*Site cleanup report (SCR)*” means a report that addresses the overall size and scope of contamination involving an underground storage tank site. The report is designed to advise DNR and the UST board of pertinent information concerning the release reported at that site. The report must address all pertinent requirements of Iowa Code section 455B.474, subsection 1, paragraphs “d” and “f.”

### **591—13.2(455G) General requirements.**

**13.2(1)** Qualification for remedial account benefits related to a community remediation project is subject to board approval based on the recommendations made to the board by interested parties.

**13.2(2)** A community remediation project must include at least two sites that have qualified for remedial account benefits under Iowa Code section 455G.9. The community, the DNR or the board may request that a community be considered for a community remediation or packaged community remediation project. More than one community remediation project may be included in a request for proposal if, in the opinion of the administrator, such inclusion will allow for a better response to environmental or public health concerns at a lower cost. Individual owners shall also have the right to request inclusion in the community remediation or packaged community remediation project or to develop, through a common consultant, a budget covering a release impacting only their site or impacting their site and other sites if all are in agreement on the consultant to use.

**13.2(3)** Sites within a community remediation or packaged community remediation project which have not qualified for account benefits under Iowa Code section 455G.9 may be included in the project by the board. The board may approve the payment of all or part of the expenses of such sites in community remediation or packaged community remediation projects based on the impact that the specific site, that otherwise had not qualified, has on the expense and success of the project as a whole. The DNR may participate in a project as Federal Trust Fund rules allow. Nothing herein shall be deemed to limit the ability to receive additional federal financial assistance for UST releases.

a. Sites eligible for site cleanup report funding within the community remediation or packaged community remediation project are those sites:

- (1) Eligible for benefits under Iowa Code section 455G.9.
- (2) Underwritten which are required to have a site check performed.

(3) Not eligible for benefits under Iowa Code chapter 455G when requested by the DNR and approved by the board.

(4) Where prior budget approval was received or where a site cleanup report was submitted by another consultant but rejected by the DNR. Such sites shall be reviewed by the administrator on a case-by-case basis for inclusion in the overall community remediation or packaged community remediation project.

(5) Owners or operators who have not qualified for benefits under Iowa Code section 455G.9 may participate in the community remediation or packaged community remediation project at their own expense.

(6) Owners or operators who are voluntarily participating in the community remediation or packaged community remediation project but have not qualified for benefits under Iowa Code section 455G.9 shall pay the average cost of completion in the project for the site cleanup report prior to work at their site being initiated. The average cost shall be determined by dividing the total amount bid on the community remediation or packaged community remediation project by the number of sites included. The final costs to participating owners/operators shall be their share of the total costs including the initial amount contracted for plus any change orders approved by the board or its designee in addition to any specific work for the owners/operators on their site, such as soil over excavation or tank removal which is unique to that site.

*b.* Owners or operators of sites which may opt out of the site cleanup report portion of the community remediation or packaged community remediation project are those:

(1) Sites where a verified real estate transaction is in process and time is of the essence. For the purpose of this rule, a verified real estate transaction is one in which an offer to purchase in writing has been made and reviewed by the board.

(2) On a case-by-case basis, the administrator determines that an owner may use its own consultant, with remedial benefits limited to the average per site cost of the community remediation or packaged community remediation project.

(3) Where, upon request, the DNR determines a delay would result in significant environmental damage or an administrative order requiring action has been issued by the DNR.

**13.2(4)** Except as specified in these rules, all program requirements apply to sites in community remediation projects, including, but not limited to, those requirements related to cost control.

**13.2(5)** Corrective action costs incurred prior to a community remediation project contract being awarded are subject to requirements under Iowa Code chapter 455G. The board will pay 100 percent of the cost of the site cleanup report only after the project has been approved. Expenses incurred on sites by owner/operators prior to approval of community remediation projects will not be included in the community remediation reimbursement, but will count toward overall copayment requirements on an individual claim. If the work occurred prior to the community remediation and is payable at 100 percent as part of the site cleanup report, the board may pay 100 percent of the cost incurred above the \$20,000 SCR limit for the cost of the SCR at a site included in the project. The payments above \$20,000 for SCR costs will reduce the next level of remediation expense paid by the amount of the payment in excess of \$20,000.

*a.* Corrective action costs include the cost of work incurred during an off-site investigation to complete the site cleanup report, monitoring and remediation of the site, if necessary. Off-site work done as a part of the SCR will be paid for as outlined above.

*b.* Off-site costs which are specifically included are those costs related to off-site drilling and testing associated with the assessment of the extent of contamination as required by the DNR.

*c.* Costs associated with off-site activity will not qualify for remedial benefits if a site is otherwise ineligible.

**13.2(6)** All reports and correspondence covering any assessment activity, testing, monitoring, cleanup, remediation or other work completed on the site and submitted to the DNR shall be sent to the selected contractor or consultant for a community remediation or packaged community remediation project by each owner or the consultant completing the prior work on the eligible site and participating in the community remediation or packaged community remediation project. Failure to supply or disclose such information and materials may be cause for the denial of remedial account benefits and other program benefits for the individual site involved.

**13.2(7)** Any site receiving program benefits within a community remediation project area shall participate in the project if it is determined by the program administrator that the participation is necessary for the successful completion of the community remediation project. An owner or operator or the representative of the owner or operator failing to respond to the administrator's requests may be denied remedial account and other program benefits for that failure to participate. A determination by the administrator that an owner failed to cooperate may be appealed.

**591—13.3(455G) Contractor requirements.**

**13.3(1)** Any site included in the community remediation or packaged community remediation project may be subject to a bidding process on the work to be done. Any contractor who is or has worked on a site included in the community remediation or packaged community remediation project but who is not chosen for that ongoing work is required to supply any and all records of any work performed on that site. Failure to supply documentation requested will terminate any future payments to that contractor on any other work until the information requested has been received. After a community remediation or packaged community remediation contract award to a contractor, no further work can be done by the prior contractor on any site within a community remediation or packaged community remediation project without prior written authorization from the administrator.

**13.3(2)** Contracts for community remediation or packaged community remediation projects may be required to be subject to a bidding process. Contracts for community remediation or packaged community remediation may be bid among the contractors expressing an interest to the board or administrator when it is deemed by the board to be in the best interest of the program. The board may charge a fee to anyone requesting a copy of the request for proposal to cover the expense of providing the request.

*a.* Corrective action design, construction, monitoring and remediation, as defined in Iowa Code section 455G.2, shall be subject to public bid as much as practical.

*b.* The request for proposals for corrective action design, construction, monitoring and remediation shall include only sites which have jointly contributed to a plume of contamination as indicated by the site cleanup report.

*c.* Sites included in the site cleanup report phase of activity but which have not contributed to a common plume of contamination may participate in the corrective action community remediation or packaged community remediation project subject to written request, but only upon written approval by the administrator. Locations which are not in a common plume may also complete necessary corrective action subject to budget approval as provided in 591—Chapter 11.

*d.* Corrective action for emergency conditions, free product recovery or abandoned tanks found during the completion of required site cleanup reports shall not require a separate bidding because this corrective action is within the terms of the contract for the community remediation or packaged community remediation project. Should free product or abandoned tanks be found during completion of a site cleanup report in a community remediation or packaged community remediation project, the contractor shall be authorized, upon administrator approval, to remove free product and abandoned tanks.

**13.3(3)** The board is not required to select a contractor based solely on the low cost bid. The board may accept or reject any bid or waive any technical difficulty when the board determines it to be in the best interest of the community remediation project. Bids shall be subject to contract negotiation after a contractor has been selected.

**13.3(4)** A contractor which contracts with the board for work on a community remediation project must obtain prior budget approval from the administrator prior to undertaking work on the project. The administrator or designee will review and approve expenses associated with the project. Work performed which exceeds the scope of the work approved will not be paid unless the contractor can justify the reasons for the additional work.

**13.3(5)** The site cleanup report for a community remediation project must detail the overall finding of the community remediation project investigation including recommendations of whether the sites within a community remediation project should be classified as “high,” “low,” or “no action required” site as specified in Iowa Code section 455B.474, subsection 1, paragraphs “d” and “f.” There may be different sites within the community remediation project that are classified differently based on the contractor’s recommendation and DNR approval.

**13.3(6)** The selected contractor shall provide a bid bond, letter of credit or certified check equal to 10 percent of the bid on any community remediation or packaged community remediation project where 31 or more sites have been included in the proposal. The contractor may be required to provide the board with evidence of professional liability insurance as determined by the administrator. The contractor or consultant may be required to provide performance and payment bonds.

#### **591—13.4(455G) Contracts, change orders and final costs.**

**13.4(1)** Contracts shall be negotiated and finalized by the administrator after award by the board but prior to the signing of a contract, based on the most accurate scope of work covering eligible community remediation or packaged community remediation owner/operators.

**13.4(2)** Change orders may be negotiated for:

*a.* Extraordinary costs, including:

- (1) Extensive rock drilling if not originally included in the request for proposal.
- (2) Unexpected vapor analysis in caverns, caves and sinkholes.
- (3) Confined space personal protection gear if required.
- (4) Additional drilling if the depth to the aquifer greatly exceeded the estimates in the request for proposals.
- (5) The completion of boreholes to monitoring wells when groundwater contamination is found during the project.
- (6) Additional borings or monitoring wells to define transition zones as requested by the DNR.
- (7) Any other situations where approved by the administrator or the board when authorized to do so.

*b.* A change in scope of work when:

- (1) Additional sites are found to be eligible for the project.
- (2) A site is found not to be eligible for benefits, except the board may include a site which was eligible at the start of the project but lost eligibility after the contract was initiated.
- (3) A site which had previously tested clean or was underwritten as provided in Iowa Code section 455G.11 is determined to have contamination and the DNR requires completion of a site cleanup report.
- (4) Free product or abandoned tanks are discovered during the course of completion of areawide site cleanup report.
- (5) A site requires additional testing to ascertain the type of contamination present.
- (6) A site requires testing different from the DNR normal testing requirements.
- (7) Other situations are approved by the administrator or the board when authorized to do so.

**13.4(3)** The request for proposals defines the scope of work for borings, completed wells, testing, and areas similar to these. Costs provided by those bidding on the overall scope of work are on a per unit basis and subject to renegotiation if there has been a significant change in scope.

**13.4(4)** When the amount of time and costs for services are determined by the bidder in order to meet the requirements included in the request for proposal, the costs will be paid on a cost-not-to-exceed basis, as outlined in the bidder's proposal.

**13.4(5)** The administrator may approve any single change order not to exceed 15 percent of the negotiated cost, without prior board approval, as outlined in rule 13.8(455G). If the cumulative total of all change orders on a given project exceeds 25 percent of the total initial negotiated cost, board approval is required on all subsequent change orders for the project. Board approval is not required when an increase occurs as a result of the addition of an eligible site. Neither is board approval required when an owner/operator elects to join a community remediation or packaged community remediation project after the contract is awarded.

**591—13.5(455G) Recovery of free product discovered during the completion of a site cleanup report in a community remediation or packaged community remediation project.**

**13.5(1)** The board shall require the consultant or contractor handling the project to perform free product recovery if free product is discovered during the course of the project. Expenses for field time, report submittal, product disposal, free product recovery systems and any other related cost shall be paid by the fund as an emergency response cost after budget approval by the administrator.

**13.5(2)** Free product recovery during completion of a site cleanup report shall be considered temporary abatement of the free product, not a permanent solution. Cost recovery against all responsible parties shall be sought by the board.

**13.5(3)** The board may require that the use of equipment to remove free product during completion of the site cleanup reports be publicly bid in an effort to achieve the lowest overall cost. Any such bids shall include services for tracking, storage, maintenance and movement of systems as deemed appropriate by the administrator and the DNR. If public bidding occurs, all costs will be paid by the board. Equipment purchased would be rented to each owner or operator for the length of time that the system was needed to meet necessary DNR corrective action standards.

**13.5(4)** If more than one site contributed to a free product contamination plume, costs for each contributor shall be allocated on a pro rata basis with each participant sharing the overall cost for free product removal equally. The administrator, at the written request of one or more of the owners or operators included in the community remediation or packaged community remediation project, may consider other methods of allocating costs for the work completed. The owner or operator making such request shall outline the method of allocation as an alternative. The board or its designee may allow the proposed alternative or may allocate costs as previously outlined in this rule.

**13.5(5)** Each owner or operator shall be responsible for free product recovery and required reports to the DNR. The selected contractor or consultant shall routinely maintain the system and submit all necessary reports to the DNR.

**13.5(6)** If free product recovery is required after the completion of the site cleanup report phase of activity, the owner/operator shall be responsible for obtaining budget approval of additional activity from the administrator.

**13.5(7)** Free product recovery costs are subject to deductible and copayments obligations.

**13.5(8)** Costs for work associated with a specific site, even those involving free product which has merged, shall be paid by the owner and operator of the site and shall not be prorated.

**591—13.6(455G) Completion of corrective action design reports.**

**13.6(1)** The selection of a consultant to prepare the corrective action design shall be by public bidding. The board shall establish guidelines which measure the technical and cost aspects of the proposal. Owners or operators that are affected may also provide input into the process based on the overall effects to business operations.

**13.6(2)** Selection shall be based on the best combination of the proposed technology and the capital and long-term costs.

**13.6(3)** The board shall have the right to renegotiate the cost of services after the completion of the corrective action design report and prior to the actual installation of corrective action measures designed to remediate the site.

**13.6(4)** The board's selection of technology does not relieve an owner/operator from the obligation to cooperate with the board. Failure to cooperate may result in the loss of benefits. The board reserves the right to rebid during the review of submitted proposals. The technology selected by the board shall be provided to the owner/operator for review. The owner may propose alternative technology, provided that it does not slow down the process and has DNR approval and the cost of presenting such alternatives is borne by the owner or operator. The board is not obligated to follow alternative suggestions.

**591—13.7(455G) Payment for corrective action and the completion of the corrective action design report when commingled plumes exist.**

**13.7(1)** All work in this phase of activity is subject to the copayment and deductibles in Iowa Code section 455G.9.

**13.7(2)** The board shall pay fund benefits directly to the consultant. The owner/operator shall pay the balance to the consultant with proof of payment provided to the administrator.

**13.7(3)** Costs shall be borne equally by all sites contributing to the plume, unless specific action is required attributable to a specific site, such as overexcavation. Costs of specific action attributable to a specific site shall be borne by the owner/operator at the site in accordance with the level of copayment and deductible that remains the owner/operator's responsibility.

**13.7(4)** Nothing herein will diminish or extinguish the rights of individual owners or operators to seek recovery of funds paid by other affected parties.

**591—13.8(455G) Selection of a consultant when the plume of contamination is attributable to eligible and noneligible sites.**

**13.8(1)** The board shall include all sites sharing a common plume if each party agrees in writing to pay for their costs as determined by these rules. The board shall attempt to negotiate inclusion prior to corrective action design or actual cleanup.

**13.8(2)** The board shall determine on a case-by-case basis whether to include and pay for the cost on the corrective action design and cleanup of a noneligible, insolvent or site with limited benefits. If agreement cannot be reached before starting corrective action, based on its impact to the project as a whole, the board shall seek cost recovery on any funds expended on a site with limited benefits that was insolvent or noneligible.

**13.8(3)** All costs shall be prorated among the sites included in the project.

**591—13.9(455G) Process for handling an owner/operator who does not want to participate in the corrective action phase of the corrective action community remediation or packaged community remediation project.**

**13.9(1)** The board shall require the participation of all sites in addressing the overall commingled plume and seek a negotiated settlement with the owner/operator who, for whatever reason, fails to participate.

**13.9(2)** If settlement is not possible, the board may approve the completion of all work required to meet DNR's guidelines. The board may seek cost recovery against owner/operator not settling with the board.

These rules are intended to implement Iowa Code sections 455G.2(4), 455G.2(5), and 455G.9.

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CHAPTER 14

Reserved